



INTERIOR BOARD OF INDIAN APPEALS

Banc One Leasing Corp. v. Anadarko Area Director, Bureau of Indian Affairs

24 IBIA 113 (07/15/1993)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

BANC ONE LEASING CORPORATION,
Appellant

v.

ANADARKO AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 93-103-A
:
:
: July 15, 1993

Appellant Banc One Leasing Corporation seeks review of the failure of the Anadarko Area Director, Bureau of Indian Affairs (Area Director, BIA), to respond to a May 24, 1993, demand for payment of \$566,377.06 (corrected amount) allegedly due to appellant under BIA Loan Guaranty Certificate No. B069100051. The loan guaranty was made on behalf of the Kiowa, Comanche and Apache Intertribal Land Use Committee, apparently in regard to the Native Sun Water Park.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that, under the circumstances of this case, the appeal should be dismissed.

Appellant's May 24, 1993, letter to the Area Director stated that if BIA had not tendered full payment by June 15, 1993, it would file an appeal under 25 CFR 2.8, which provides procedures to appeal from the inaction or indecision of a BIA official. The letter was sent only to the Area Director. The documents submitted with appellant's notice of appeal and statement of reasons include a June 22, 1993, letter from counsel for the Area Director, indicating that he had not been aware of the payment demand until informed of it by counsel for appellant on June 16, 1993. The June 22 letter further states that a decision will be made by July 23, 1993.

Although the Board is not aware of why appellant waited a month, until the week before the date established for the Area Director's decision, to file an appeal under section 2.8, appellant's notice of appeal and statement of reasons indicate at pages 1-2 that it "would not object to a remand of this matter permitting the Area Director's decision to proceed as presently scheduled, so long as [appellant's] rights to appeal the Area Director's previous inaction, and any subsequent action [he] may take in this matter, are fully preserved."

The Board finds that this appeal from the Area Director's inaction should be dismissed with prejudice. The failure to issue a decision has been fully explained, and a date by which a decision will be issued has been established. This action fully comports with the intent of section 2.8, even if not with the section's exact timeframes.

Appellant has the right to appeal from the decision issued by the Area Director in this matter. The Area Director's decision letter will inform appellant of its appeal rights. The Board will entertain any appeal properly taken from the Area Director's decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the inaction of the Anadarko Area Director is dismissed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge